

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

LONG ISLAND REELTY GROUP OF L.I., INC.

and

Cases 29-CA-26436
29-CA-26555

LOCAL 808, IBT, AFL-CIO

Richard Bock, Esq., for the General Counsel.
Joshua McInerney, Esq., for the Charging Party.

DECISION

D. BARRY MORRIS, Administrative Law Judge: This case was heard before me in Brooklyn, NY on December 16, 2004¹. A consolidated complaint was issued on October 26, alleging that Respondent violated Section 8(a)(1), (3) and (5) of the National Labor Relations Act, as amended (the "Act"). The complaint was served upon Respondent by regular and certified mail. Counsel for the General Counsel unilaterally granted Respondent nine extra days within which to file an answer. At no time did Respondent file an answer.

Section 102.20 of the Board's Rules and Regulations states that if an answer is not filed, absent good cause, all the allegations of the complaint are deemed to be admitted to be true. Good cause not having been shown to the contrary, at the hearing General Counsel moved for default judgment. Pursuant to Section 102.20, I grant General Counsel's Motion for Summary Judgment (see *Calyer Architectural Woodworking Corp.*, 338 NLRB No. 33 (Sept. 30, 2002)) and make the following Findings of Fact and Conclusions of Law.

Findings of Fact

I. Jurisdiction

Respondent, a New York corporation, with its principal place of business located at 70 Broadway, Hicksville, NY, and with a facility located at 15-35 Elk St., Hempstead, NY, has owned and operated residential apartment buildings. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. In addition, Local 808, IBT (the "Union") is a labor organization within the meaning of Section 2(5) of the Act.

II. The Unfair Labor Practices

Until April 30, 15-35 Elk Street LLC ("15-35 LLC") was the owner and operator of the apartment buildings at the Elk Street facility. The managing agent was GRJH, Inc. Since that time 15-35 LLC, through GRJH, recognized the Union as the exclusive collective-bargaining representative of

¹ All dates refer to 2004 unless otherwise specified.

its building service and maintenance employees. The most recent collective-bargaining agreement is effective October 2003 through September 2006.

5 On April 30 Respondent became the owner of the Elk Street facility and on May 1 it commenced operations at the facility and hired a majority of employees in the Unit. Since that time it has continued to be engaged in the same business operations as the prior owner, at the same location with the same tenants. GRJH continues to manage the facility and is an agent of Respondent with respect to the operation of the Elk Street facility.

10 On June 7 and June 24, respectively, Respondent discharged its employees, Angel Bonilla and Jose Cortorreal, and has failed to reinstate them to their former positions. Respondent discharged both employees because of their protected activities.

15 On September 28 the Union requested that Respondent recognize and bargain with it and furnish certain information. The information requested is necessary for the Union's performance of its duties as the collective bargaining representative of the employees in the Unit. Respondent has failed to recognize and bargain with the Union and has failed to furnish the requested information.

Conclusions of Law

20 1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

25 2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of the Elk Street facility constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

30 All building service and maintenance employees, excluding guards, supervisors, managerial, confidential and all other employees.

4. Respondent is the successor employer of the employees in the Unit.

35 5. By its discharge of Bonilla and Cortorreal because of their protected activities, Respondent has violated Section 8(a)(1) and (3) of the Act.

6. By refusing to recognize and bargain with the Union, and by refusing to furnish the information requested on September 28, Respondent has violated Section 8(a)(1) and (5) of the Act.

40 7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

45 Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent having discriminatorily discharged employees, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the*

Retarded, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:²

ORDER

Respondent, Long Island Reelty Group of L.I., Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging employees for engaging in protected activities.

(b) Refusing to recognize and bargain collectively with Local 808, IBT and refusing to furnish the information requested in the Union's letter dated September 28, 2004.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, recognize and bargain with the Union and furnish to the Union the information requested in the letter dated September 28, 2004.

(b) Within 14 days from the date of this Order, offer Angel Bonilla and Jose Cortorreal full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the Remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter, notify the employees, in writing, that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its its agents all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facilities copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

³ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 7, 2004.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.

D. Barry Morris
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT discharge employees for engaging in activities protected by Section 7 of the Act.

WE WILL NOT refuse to recognize or bargain with Local 808, IBT and WE WILL NOT refuse to furnish the information requested in the Union's letter of September 28, 2004.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, upon request, recognize and bargain with Local 808, IBT and WE WILL furnish the information requested by the Union on September 28, 2004.

WE WILL, within 14 days from the date of the Board's Order, offer Angel Bonilla and Jose Cortorreal full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings or benefits they may have suffered, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Bonilla and Cortorreal and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

LONG ISLAND REELTY GROUP OF L.I., INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor, Brooklyn, NY 11201-4201

(718) 330-7713, Hours: 9 a.m. to 5:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (718) 330-2862.